

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**GLOBAL CROSSING ESTATE
REPRESENTATIVE, FOR ITSELF AND AS THE
LIQUIDATING TRUSTEE OF THE GLOBAL
CROSSING LIQUIDATING TRUST,**

Plaintiff,

v.

**CIBC CAPITAL PARTNERS (CAYMAN) NO. 3,
CIBC WG ARGOSY MERCHANT FUND 3 LP,
CO-INVESTMENT MERCHANT FUND LLC,
CARAVELLE INVESTMENT FUND, LLC, J.
BLOOM CORPORATION, D. KEHLER
CORPORATION, B. RABEN CORPORATION, J.
LEVINE CORPORATION, W. PHOENIX
CORPORATION, A. HEYER CORPORATION, M.
MONELLO CORPORATION, L. WAGNER
CORPORATION, E. LEVY CORPORATION, B.
SPOHLER CORPORATION, W. McLALLEN
CORPORATION, K. READ CORPORATION, B.
GERSON CORPORATION, K. MAGID
CORPORATION, T. MURPHY CORPORATION,
M. DALTON CORPORATION, N. WIESENBERG
CORPORATION, EJ PIPKIN CORPORATION, J.
BUDISH CORPORATION, J. ROSS
CORPORATION, P. DANIELS CORPORATION,
E. MALLY CORPORATION, H. NOEDING
CORPORATION, N. THOMAS CORPORATION,
L. DEBAUGE CORPORATION, A. WOOLFORD
CORPORATION, N. WESSAN CORPORATION, S.
SHAPIRO CORPORATION and J. MOGLIA
CORPORATION,**

Defendants.

X

Civil Action No. 06 CV _____

Adversary Proceeding
No. 06-01550 (REG)

X

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S
MOTION TO WITHDRAW BANKRUPTCY REFERENCE**

Preliminary Statement

Plaintiff Global Crossing Estate Representative, For Itself And As The Liquidating Trustee Of The Global Crossing Liquidating Trust (the “Estate Representative”) moves the Court, pursuant to Federal Rule of Bankruptcy Procedure 5011 and 28 U.S.C. § 157(d) to withdraw the bankruptcy reference in the above-captioned adversary proceeding.

PROCEDURAL BACKGROUND AND PARTIES

On January 28, 2002, Global Crossing Ltd. (“GX”) and fifty-four of its debtor subsidiaries filed voluntary petitions in the United States Bankruptcy Court for the Southern District of New York (“Bankruptcy Court”) for relief under Chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”). On August 30, 2002, twenty-three of GX’s debtor subsidiaries filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (GX and all of its debtor subsidiaries are collectively referred to hereinafter as the “Debtors”).

On September 16, 2002, the Debtors filed their Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code (the “Plan”). The Plan was confirmed by an order dated December 26, 2002 (the “Confirmation Order”) and became effective on December 9, 2003.

Pursuant to the terms of the Plan (including Section 5.8 thereof), the Confirmation Order and the Liquidating Trust Agreement dated as of December 9, 2003 (the “Liquidating Trust Agreement”), the Liquidating Trust was established for the purpose of liquidating the Debtors’ assets for the benefit of the Debtors’ creditors who hold Allowed Claims in Classes C, D, E, and F. The assets of the Liquidating Trust consist of, among other things, certain causes of action

(as defined in the Plan, the “Estate Representative Claims”) transferred by the Debtors to the Liquidating Trustee free of all claims, liens and encumbrances.

Pursuant to the terms of the Plan (including section 5.8 thereof), the Confirmation Order and the Liquidating Trust Agreement, the Estate Representative, consisting of five individuals, was designated to, among other things, act as Liquidating Trustee as to prosecute the Estate Representative Claims in the name of the Estate Representative.

On January 27, 2004, the Estate Representative filed an adversary proceeding in the Bankruptcy Court, captioned *Global Crossing Estate Representative v. Winnick, et al.*, 04 Civ. 02137 (REG) (the “January 27, 2004 Complaint”).

On May 19, 2004, the United States District Court for the Southern District of New York entered an order withdrawing the bankruptcy reference with respect to the January 27, 2004 Complaint, *Global Crossing Estate Representative v. Winnick et al.*, 04-02137 (REG). That action is now pending before Judge Gerard E. Lynch in the District Court under the caption *Global Crossing Estate Representative v. Winnick et al.*, 04 Civ. 02558 (GEL).

On May 19, 2005, the Estate Representative filed another adversary proceeding (the “May 19, 2005 Complaint”) against defendants Continental Casualty Company, CIBC Wood Gundy Capital (SFC) Inc., CIBC Oppenheimer Corp. and CIBC World Markets Corp.

On July 26, 2005, the United States District Court for the Southern District of New York (the “District Court”) entered an order withdrawing the bankruptcy reference with respect to the May 19, 2005 Complaint, and permitting the Estate Representative to file a consolidated amended complaint. The Consolidated Amended Complaint seeks various forms of monetary and equitable relief, including disgorgement of defendants’ profits from alleged insider sales of GX stock.

On June 20, 2006, the Estate Representative filed in the United States Bankruptcy Court another adversary proceeding (the “June 20, 2006 Complaint”) against defendants CIBC Capital Partners (Cayman) No. 3, CIBC WG Argosy Merchant Fund 3 LP, Co-Investment Merchant Fund LLC, Caravelle Investment Fund, LLC, J. Bloom Corporation, D. Kehler Corporation, B. Raben Corporation, J. Levine Corporation, W. Phoenix Corporation, A. Heyer Corporation, M. Monello Corporation, L. Wagner Corporation, E. Levy Corporation, B. Spohler Corporation, W. McLallen Corporation, K. Read Corporation, B. Gerson Corporation, K. Magid Corporation, T. Murphy Corporation, M. Dalton Corporation, N. Wiesenbergl Corporation, EJ Pipkin Corporation, J. Budish Corporation, J. Ross Corporation, P. Daniels Corporation, E. Mally Corporation, H. Noeding Corporation, N. Thomas Corporation, L. Debaugel Corporation, A. Woolford Corporation, N. Wessan Corporation, S. Shapiro Corporation and J. Moglia Corporation.

The June 20, 2006 Complaint seeks various forms of relief, including disgorgement of defendants’ profits from alleged insider trading in GX stock, imposition of a constructive trust and an accounting. The June 20, 2006 Complaint alleges defendants knowingly traded on the basis of material, non-public information received from GX directors and corporate insiders, in what defendants knew constituted a breach of their fiduciary duties to GX.

The claims and underlying facts contained in June 20, 2006 Complaint substantially overlap with claims asserted in the Consolidated Amended Complaint in *Global Crossing Estate Representative v. Winnick et al.*, 04 Civ. 02558 (GEL).

This motion seeks permission of the District Court to withdraw the bankruptcy reference as to the June 20, 2006 Complaint.

ARGUMENT

The above-captioned adversary proceeding brought by the Global Crossing Estate Representative alleges defendants improperly profited from insider trading in GX shares. In the adversary proceedings currently pending in the District Court before Judge Lynch, the Global Crossing Estate Representative alleges substantially similar claims. In each adversary proceeding, the Estate Representative alleges that, *inter alia*, GX directors and corporate insiders breached their fiduciary duties, enriching the defendants. The Estate Representative seeks various remedies, including disgorgement of the defendants' profits.

Withdrawing the reference to this adversary proceeding is proper and permissible at the discretion of the District Court pursuant to 28 U.S.C. §§ 157(d), which states:

The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown.

As noted, the claims asserted are similar to those being litigated before the District Court in the pending adversary proceedings. Thus, considerations of judicial efficiency weigh in favor of withdrawing the bankruptcy reference to this related adversary proceeding. *See In re Orion Pictures Corp.*, 4 F. 3d 1095, 1101 (2d Cir. 1993) ("District courts in this circuit have considered a number of factors in evaluating cause:... [including] considerations of efficiency, prevention of forum shopping, and uniformity in the administration of bankruptcy law.").

CONCLUSION

The motion by the Global Crossing Estate representative for an order withdrawing the bankruptcy reference with respect to the above-captioned adversary proceeding should be granted.

Dated: New York, New York
August 23, 2006

Respectfully submitted,

ENTWISTLE & CAPPUCCI LLP

By: /s/ Andrew J. Entwistle

Andrew J. Entwistle (AE-6513)
Harold F. McGuire, Jr. (HM-2440)
Arthur V. Nealon (AN-0629)
Helen Chung (HC-3552)
280 Park Avenue, 26th Floor
New York, NY 10017
(212) 894-7200

*Attorneys for Global Crossing Estate
Representative, for Itself and As The
Liquidating Trustee of the Global
Crossing Liquidating Trust*